

REFERENCE TITLE: CORP; probation officers; customary employment

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2061

Introduced by
Representative Konopnicki

AN ACT

AMENDING SECTION 38-881, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 144, SECTION 1 AND CHAPTER 185, SECTION 1; AMENDING SECTION 38-881, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 144, SECTION 2 AND CHAPTER 185, SECTION 2; RELATING TO THE CORRECTIONS OFFICER RETIREMENT PLAN; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-881, Arizona Revised Statutes, as amended by
3 Laws 2008, chapter 144, section 1 and chapter 185, section 1, is amended to
4 read:

5 38-881. Definitions

6 In this article, unless the context otherwise requires:

7 1. "Accidental disability" means a physical or mental condition that
8 the local board finds totally and permanently prevents an employee from
9 performing a reasonable range of duties within the employee's department, was
10 incurred in the performance of the employee's duties and was the result of
11 any of the following:

12 (a) Physical contact with inmates, prisoners, parolees or persons on
13 probation.

14 (b) Responding to a confrontational situation with inmates, prisoners,
15 parolees or persons on probation.

16 (c) A job related motor vehicle accident while on official business
17 for the employee's employer. A job related motor vehicle accident does not
18 include an accident that occurs on the way to or from work. Persons found
19 guilty of violating a personnel rule, a rule established by the employee's
20 employer or a state or federal law in connection with a job related motor
21 vehicle accident do not meet the conditions for accidental disability.

22 2. "Accumulated member contributions" means the sum of all member
23 contributions deducted from a member's salary and paid to the fund, plus
24 member contributions transferred to the fund by another retirement plan
25 covering public employees of this state, plus previously withdrawn
26 accumulated member contributions that are repaid to the fund in accordance
27 with this article, minus any benefits paid to or on behalf of a member.

28 3. "Alternate payee" means the spouse or former spouse of a
29 participant as designated in a domestic relations order.

30 4. "Alternate payee's portion" means benefits that are payable to an
31 alternate payee pursuant to a plan approved domestic relations order.

32 5. "Average monthly salary" means one-thirty-sixth of the aggregate
33 amount of salary that is paid a member by a participating employer during a
34 period of thirty-six consecutive months of service in which the member
35 received the highest salary within the last one hundred twenty months of
36 service. Average monthly salary means the aggregate amount of salary that is
37 paid a member divided by the member's months of service if the member has
38 less than thirty-six months of service. In the computation under this
39 paragraph, a period of nonpaid or partially paid industrial leave shall be
40 considered based on the salary the employee would have received in the
41 employee's job classification if the employee was not on industrial leave.

42 6. "Beneficiary" means an individual who is being paid or who has
43 entitlement to the future payment of a pension on account of a reason other
44 than the individual's membership in the retirement plan.

1 7. "Claimant" means a member, beneficiary or estate that files an
2 application for benefits with the retirement plan.

3 8. "Credited service" means credited service transferred to the
4 retirement plan from another retirement system or plan for public employees
5 of this state, plus those compensated periods of service as a member of the
6 retirement plan for which member contributions are on deposit in the fund.

7 9. "Cure period" means the ninety-day period in which a participant or
8 alternate payee may submit an amended domestic relations order and request a
9 determination, calculated from the time the plan issues a determination
10 finding that a previously submitted domestic relations order did not qualify
11 as a plan approved domestic relations order.

12 10. "Designated position" means:

13 (a) For a county:

14 (i) A county detention officer.

15 (ii) A nonuniformed employee of a sheriff's department whose primary
16 duties require direct contact with inmates.

17 (b) For the state department of corrections and the department of
18 juvenile corrections, only the following specifically designated positions:

19 (i) Food service.

20 (ii) Nursing personnel.

21 (iii) Corrections physician assistant.

22 (iv) Therapist.

23 (v) Corrections dental assistant.

24 (vi) Hygienist.

25 (vii) Corrections medical assistant.

26 (viii) Correctional service officer, including assistant deputy
27 warden, deputy warden, warden and superintendent.

28 (ix) State correctional program officer.

29 (x) Parole or community supervision officers.

30 (xi) Investigators.

31 (xii) Teachers.

32 (xiii) Institutional maintenance workers.

33 (xiv) Youth corrections officer.

34 (xv) Youth program officer.

35 (xvi) Behavioral health treatment unit managers.

36 (xvii) The director and assistant directors of the department of
37 juvenile corrections and the superintendent of the state educational system
38 for committed youth.

39 (xviii) The director, deputy directors and assistant directors of the
40 state department of corrections.

41 (xix) Other positions designated by the local board of the state
42 department of corrections or the local board of the department of juvenile
43 corrections pursuant to section 38-891.

44 (c) For a city or town, a city or town detention officer.

1 (d) For an employer of an eligible group as defined in section 38-842,
2 full-time dispatchers.

3 (e) For the judiciary, probation, surveillance and juvenile detention
4 officers and those positions designated by the local board of the judiciary
5 pursuant to section 38-891.

6 (f) For the department of public safety, state detention officers.

7 11. "Determination" means a written document that indicates to a
8 participant and alternate payee whether a domestic relations order qualifies
9 as a plan approved domestic relations order.

10 12. "Determination period" means the ninety-day period in which the
11 plan must review a domestic relations order that is submitted by a
12 participant or alternate payee to determine whether the domestic relations
13 order qualifies as a plan approved domestic relations order, calculated from
14 the time the plan mails a notice of receipt to the participant and alternate
15 payee.

16 13. "Domestic relations order" means an order of a court of this state
17 that is made pursuant to the domestic relations laws of this state and that
18 creates or recognizes the existence of an alternate payee's right to, or
19 assigns to an alternate payee the right to, receive a portion of the benefits
20 payable to a participant.

21 14. "Employee" means a person determined by the local board to be
22 employed by a participating employer in a designated position.

23 15. "Employer" means an agency or department of this state or a
24 political subdivision of this state that has one or more employees in a
25 designated position.

26 16. "Fund" means the corrections officer retirement plan fund.

27 17. "Fund manager" means the fund manager of the public safety
28 personnel retirement system.

29 18. "Juvenile detention officer" means a juvenile detention officer
30 responsible for the direct custodial supervision of juveniles who are
31 detained in a county juvenile detention center.

32 19. "Local board" means the retirement board of the employer that
33 consists of persons appointed or elected to administer the plan as it applies
34 to the employer's members in the plan.

35 20. "Member" means any employee who meets all of the following
36 qualifications:

37 (a) Who is a full-time paid person employed by a participating
38 employer in a designated position.

39 (b) Who is receiving salary for personal services rendered to a
40 participating employer or would be receiving salary except for an authorized
41 leave of absence.

42 (c) Whose customary employment is at least forty hours each week and
43 for more than six months in a calendar year, EXCEPT THAT FOR A PERSON WHO IS
44 EMPLOYED IN A DESIGNATED POSITION PURSUANT TO PARAGRAPH 10, SUBDIVISION (e)

1 OF THIS SECTION, WHOSE CUSTOMARY EMPLOYMENT IS AT LEAST TWENTY HOURS EACH
2 WEEK AND FOR MORE THAN TWENTY WEEKS IN A FISCAL YEAR.

3 21. "Normal retirement date" means the first day of the calendar month
4 immediately following an employee's completion of twenty years of service or,
5 in the case of a dispatcher, twenty-five years of service, the employee's
6 sixty-second birthday and completion of ten years of service or the month in
7 which the sum of the employee's age and years of credited service equals
8 eighty.

9 22. "Notice of receipt" means a written document that is issued by the
10 plan to a participant and alternate payee and that states that the plan has
11 received a domestic relations order and a request for a determination that
12 the domestic relations order is a plan approved domestic relations order.

13 23. "Participant" means a member who is subject to a domestic relations
14 order.

15 24. "Participant's portion" means benefits that are payable to a
16 participant pursuant to a plan approved domestic relations order.

17 25. "Participating employer" means an employer that the fund manager
18 has determined to have one or more employees in a designated position or a
19 county, city, town or department of this state that has entered into a
20 joinder agreement pursuant to section 38-902.

21 26. "Pension" means a series of monthly payments by the retirement
22 plan.

23 27. "Personal representative" means the personal representative of a
24 deceased alternate payee.

25 28. "Plan approved domestic relations order" means a domestic relations
26 order that the plan approves as meeting all the requirements for a plan
27 approved domestic relations order as otherwise prescribed in this article.

28 29. "Probation or surveillance officer" means an officer appointed
29 pursuant to section 8-203, 12-251 or 12-259 but does not include other
30 personnel, office assistants or support staff.

31 30. "Retired member" means an individual who is being paid a pension on
32 account of the individual's membership in the retirement plan.

33 31. "Retirement" means termination of employment after a member has
34 fulfilled all requirements for a pension.

35 32. "Retirement plan" or "plan" means the corrections officer
36 retirement plan established by this article.

37 33. "Salary" means the base salary, shift differential pay and holiday
38 pay paid a member in a designated position for personal services rendered to
39 a participating employer on a regular monthly, semimonthly or biweekly
40 payroll basis. Salary includes amounts that are subject to deferred
41 compensation or tax shelter agreements. Salary does not include payment for
42 any remuneration or reimbursement other than as prescribed by this paragraph.
43 For the purposes of this paragraph, "base salary" means the amount of
44 compensation each member is regularly paid for personal services rendered to
45 an employer before the addition of any extra monies, including overtime pay,

1 shift differential pay, holiday pay, fringe benefit pay and similar extra
2 payments.

3 34. "Segregated funds" means the amount of benefits that would
4 currently be payable to an alternate payee pursuant to a domestic relations
5 order under review by the plan, or a domestic relations order submitted to
6 the plan that failed to qualify as a plan approved domestic relations order,
7 if the domestic relations order were determined to be a plan approved
8 domestic relations order.

9 35. "Service" means employment rendered to a participating employer as
10 an employee in a designated position. Any absence that is authorized by an
11 employer, including any periods during which the employee is on an employer
12 sponsored long-term disability program, is considered as service if the
13 employee returns or is deemed by the employer to have returned to a
14 designated position within the period of the authorized absence.

15 36. "Total and permanent disability" means a physical or mental
16 condition that is not an accidental disability, that the local board finds
17 totally and permanently prevents a member from engaging in any gainful
18 employment and that is the direct and proximate result of the member's
19 performance of the member's duty as an employee of a participating employer.

20 Sec. 2. Section 38-881, Arizona Revised Statutes, as amended by Laws
21 2008, chapter 144, section 2 and chapter 185, section 2, is amended
22 effective on the date prescribed in Laws 2005, chapter 324, section 2 but
23 only on the occurrence of the condition prescribed by Laws 2005, chapter 324,
24 section 2, to read:

25 38-881. Definitions

26 In this article, unless the context otherwise requires:

27 1. "Accidental disability" means a physical or mental condition that
28 the local board finds totally and permanently prevents an employee from
29 performing a reasonable range of duties within the employee's department, was
30 incurred in the performance of the employee's duties and was the result of
31 any of the following:

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33 probation.

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35 parolees or persons on probation.

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37 for the employee's employer. A job related motor vehicle accident does not
38 include an accident that occurs on the way to or from work. Persons found
39 guilty of violating a personnel rule, a rule established by the employee's
40 employer or a state or federal law in connection with a job related motor
41 vehicle accident do not meet the conditions for accidental disability.

42 2. "Accumulated member contributions" means the sum of all member
43 contributions deducted from a member's salary and paid to the fund, plus
44 member contributions transferred to the fund by another retirement plan
45 covering public employees of this state, plus previously withdrawn

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2 with this article, minus any benefits paid to or on behalf of a member.

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15 considered based on the salary the employee would have received in the
16 employee's job classification if the employee was not on industrial leave.

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19 than the individual's membership in the retirement plan.

20 7. "Claimant" means a member, beneficiary or estate that files an
21 application for benefits with the retirement plan.

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23 retirement plan from another retirement system or plan for public employees
24 of this state, plus those compensated periods of service as a member of the
25 retirement plan for which member contributions are on deposit in the fund.

26 9. "Cure period" means the ninety-day period in which a participant or
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28 determination, calculated from the time the plan issues a determination
29 finding that a previously submitted domestic relations order did not qualify
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37 juvenile corrections, only the following specifically designated positions:

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1 (viii) Correctional service officer, including assistant deputy
2 warden, deputy warden, warden and superintendent.

3 (ix) State correctional program officer.

4 (x) Parole or community supervision officers.

5 (xi) Investigators.

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12 juvenile corrections and the superintendent of the state educational system
13 for committed youth.

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15 state department of corrections.

16 (xix) Other positions designated by the local board of the state
17 department of corrections or the local board of the department of juvenile
18 corrections pursuant to section 38-891.

19 (c) For a city or town, a city or town detention officer.

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14 participating employer or would be receiving salary except for an authorized
15 leave of absence.

16 (c) Whose customary employment is at least forty hours each week and
17 for more than six months in a calendar year, **EXCEPT THAT FOR A PERSON WHO IS**
18 **EMPLOYED IN A DESIGNATED POSITION PURSUANT TO PARAGRAPH 10, SUBDIVISION (e)**
19 **OF THIS SECTION, WHOSE CUSTOMARY EMPLOYMENT IS AT LEAST TWENTY HOURS EACH**
20 **WEEK AND FOR MORE THAN TWENTY WEEKS IN A FISCAL YEAR.**

21 21. "Normal retirement date" means the first day of the calendar month
22 immediately following an employee's completion of twenty years of service or,
23 in the case of a dispatcher, twenty-five years of service, the employee's
24 sixty-second birthday and completion of ten years of service or the month in
25 which the sum of the employee's age and years of credited service equals
26 eighty.

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3 personnel, office assistants or support staff.

4 30. "Retired member" means an individual who is being paid a pension on
5 account of the individual's membership in the retirement plan.

6 31. "Retirement" means termination of employment after a member has
7 fulfilled all requirements for a pension.

8 32. "Retirement plan" or "plan" means the corrections officer
9 retirement plan established by this article.

10 33. "Salary" means the base salary, overtime pay, shift differential
11 pay and holiday pay paid a member in a designated position for personal
12 services rendered to a participating employer on a regular monthly,
13 semimonthly or biweekly payroll basis, except that for the purposes of this
14 paragraph the amount of overtime included shall not include payments to the
15 member for the sale of compensatory time. Salary includes amounts that are
16 subject to deferred compensation or tax shelter agreements. Salary does not
17 include payment for any remuneration or reimbursement other than as
18 prescribed by this paragraph. For the purposes of this paragraph, "base
19 salary" means the amount of compensation each member is regularly paid for
20 personal services rendered to an employer before the addition of any extra
21 monies, including overtime pay, shift differential pay, holiday pay, payments
22 for the sale of compensatory time, fringe benefit pay and similar extra
23 payments.

24 34. "Segregated funds" means the amount of benefits that would
25 currently be payable to an alternate payee pursuant to a domestic relations
26 order under review by the plan, or a domestic relations order submitted to
27 the plan that failed to qualify as a plan approved domestic relations order,
28 if the domestic relations order were determined to be a plan approved
29 domestic relations order.

30 35. "Service" means employment rendered to a participating employer as
31 an employee in a designated position. Any absence that is authorized by an
32 employer, including any periods during which the employee is on an employer
33 sponsored long-term disability program, is considered as service if the
34 employee returns or is deemed by the employer to have returned to a
35 designated position within the period of the authorized absence.

36 36. "Total and permanent disability" means a physical or mental
37 condition that is not an accidental disability, that the local board finds
38 totally and permanently prevents a member from engaging in any gainful
39 employment and that is the direct and proximate result of the member's
40 performance of the member's duty as an employee of a participating employer.

41 Sec. 3. Emergency

42 This act is an emergency measure that is necessary to preserve the
43 public peace, health or safety and is operative immediately as provided by
44 law.